

Abstract

Statutory liability of members and other persons for debts of business corporations (including supranational corporations)

The thesis aims to introduce the economic rationale behind the legal concept of limited liability, including the risks for creditors attached thereto, and to analyse the legal instruments designed to remedy the impacts of its misuse or abuse. Accordingly, this thesis attempts to point to the shortcomings of the current legal framework and to offer a solution thereto. For this purpose the author uses the traditional methods of legal interpretation and draws upon the laws of the United Kingdom, which inspired the authors of the Czech Corporations Act 2012 in many respects.

After the opening chapter, which introduces the current legal framework for limited liability of shareholders and defines legal relations of company's agents towards third persons, the historic development of limited liability in the United Kingdom will be outlined in the second chapter. The introduction of limited liability in 19th Century was accompanied by intense society-wide debate, the findings of which will help to understand the limited liability in its wider context and will form the ground for the following assessment of its benefits and risks for creditors of limited liability companies.

Third chapter examines the concept of the statutory liability in case of company insolvency under the new sec. 68 of Corporations Act 2012. As the provision applies to directors of the company, it is according to the author the main legal instrument for regulation of the risks for creditors attached to limited liability and for remedying impacts of its abuse. Moreover, it also applies to persons who intervene into the management of a company despite not being directors of a company.

Specifically, the statutory liability of influential and controlling persons, respectively, (*vlivná osoba* and *ovládající osoba* in Czech) under sec. 76 (3) of Corporations Act 2012 as well as the statutory liability of persons in position similar to those of director (*osoba v obdobném postavení člena statutárního orgánu* in Czech) under sec. 69 (2) of Corporations Act 2012 will be analysed. It follows the provisions will in most cases apply to shareholders of company, the liability of which is limited in standard situations. In order to overcome the statutory shortcomings the author offers an interpretation using the UK's concept of transfer of fiduciary duties. The final chapter summarises the main findings and evaluates the effectiveness of current legal framework in respect of protection of creditors.

Accordingly, the focus of the thesis is narrower than the title may suggest as it skips the issue of unlimited company and focuses on liability of shareholders in position of influential and controlling persons, respectively, or in a position similar to that of director rather than on liability of shareholders in standard situations. The reason for this arrangement is that statutory liability of shareholders in standard situations is well examined by academic literature and case-law. Conversely, the new concept of statutory liability of directors and other persons in case of company insolvency gives rise to many issues and the judicial approach thereto will have a significant impact on legal and business environment in Czech Republic. In addition, there is a lack of examination of economic rationale behind limited liability in Czech-written literature.

The thesis draws upon the legal framework effective as of 15/06/2014.

Key words: limited liability, shareholders, insolvency